IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

Crl.MC.No. 4762 of 2003(A)

AGAINST THE ORDER DATED 06/09/2003 IN CRMP.2000/03 IN CC.1527/2001 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOCHI

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PETITIONER: ACCUSED

ABDULLA KUNJU, PROPRIETOR,
MANGAD ROAD CARRIERS, 4/243, NEAR MUNICIPAL OFFICE
SOUTH KALAMASSERY, KOCHI-682 133

BY ADV. M/S VINOD VALLIKKAPPAN & SMT.MEDONA LOPEZ

RESPONDENTS: COMPLAINANT

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1. BIRLA GLOBAL FINANCE LTD., APEEJAY,
2ND FLOOR, SHAHID BHAGAT SINGH ROAD, FORT,
MUMBAI 400 001, REPRESENTED BY MR.SUVENDU MISHRA
S/O. JAGAHANDHU MISHRA, AGED 33 YEARS, THE POWER
HOLDER AND GROUP MANAGER OF THE BRANCH OFFICE,
M.G.ROAD, KOCHI-682035

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

R2 BY PUBLIC PROSECUTOR SRI GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 29/11/2006, THE COU ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.M.C.NO.4762 OF 2003

DATED THIS THE 29TH NOVEMBER, 2006

ORDER

The petitioner who is the accused in C.C.No.1527/2001 in the court of the Judicial Magistrate of the First Class-I, Kochi with respect to the offence under section 138 N.I.Act has sought for getting quashed the order of the court below in Crl.M.P.2000/2003 declining the prayer of the petitioner to have the impugned cheque sent for the opinion of the handwriting expert. It is submitted that the petitioner/accused had availed hire purchase facility from the respondent company with respect to three lorries and that altogether, the amount would work out to Rs.20,30,000/-. It is further alleged that the vehicles were purchased in the name of the petitioner and that the petitioner had spent a sum of Rs.7,54,000/- for body building. The amounts were repaid in 33 monthly instalments at the rate of Rs.84,103/-. The petitioner had handed over 33 signed blank cheques. Altogether a sum of Rs.10,17,897/-

were remitted in 17 instalments. Subsequently 4 cheques, each for a sum of Rs.84,103/-, were dishonoured. The blank cheques were given authorizing the company to fill up the instalment amount of Rs.84,103/- only. The respondent company had no authority to fill up the cheque with the excess amount. Four criminal cases were filed with respect to the dishonour of the 4 cheques. Subsequently, the vehicles were re-possessed and sold. Thereafter the company has filled the blank cheque leaf bearing No.254888 entering an amount of Rs.9,65,437/- and put a subsequent date and got it dishonoured. According to PW-1, the branch manager of the respondent, 12 post dated cheques were given by the petitioner and the cheques were filled up with the instalment amount of Rs.84,103/-. He has also stated that the handwriting in Ext.P8 regarding the payee's name and the amount are not different although he has admitted that there are some difference in the ink. The matter was posted for defence evidence

and it is at that time the application was filed to have the matter compared by the handwriting expert to ascertain the handwriting and also to see as to whether they are contemporary in nature.

2. I find that the court below has dismissed the application as the signature is not disputed and as the court is empowered to compare the handwriting by itself and also as there is no evidence as to who has written the details in Ext.P8. I find that the case is of the year 2001. As the respondent has been authorised to fill up the blank cheques, the difference in the writings would not be of any consequence. I find no reason to disturb the finding of the court below.

3.All the same, in view of the allegation that the vehicle was repossessed and sold and it is thereafter that the cheques have been filled up and presented, maintainability of the proceedings is a matter to be considered seriously. The

petitioner/accused may raise the above contentions before the trial court and the court shall consider the same and dispose of the case on merits.

The Crl.M.C. is disposed of as above.

The parties shall appear before the court below on 15-12-2006.

(K.R.UDAYABHANU)

Judge.

kvm/-